

be rescinded or modified. Unless otherwise ordered by the OTS, the order shall continue in place while such request is pending before the OTS.

§ 570.5 Enforcement of orders.

(a) *Judicial remedies.* Whenever a savings association fails to comply with an order issued under section 39 of the FDI Act, the OTS may seek enforcement of the order in the appropriate United States district court pursuant to section 8(i)(1) of the FDI Act.

(b) *Administrative remedies.* Pursuant to section 8(i)(2)(A) of the FDI Act, the OTS may assess a civil money penalty against any savings association that violates or otherwise fails to comply with any final order issued under section 39 and against any savings association-affiliated party who participates in such violation or noncompliance.

(c) *Other enforcement action.* In addition to the actions described in paragraphs (a) and (b) of this section, the OTS may seek enforcement of the provisions of section 39 of the FDI Act or this part through any other judicial or administrative proceeding authorized by law.

APPENDIX A TO PART 570—INTERAGENCY GUIDELINES ESTABLISHING STANDARDS FOR SAFETY AND SOUNDNESS

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- A. Preservation of existing authority.
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III. Prohibition on Compensation That Constitutes an Unsafe and Unsound Practice

- A. Excessive compensation.
- B. Compensation leading to material financial loss.

I. Introduction

i. Section 39 of the Federal Deposit Insurance Act¹ (FDI Act) requires each Federal banking agency (collectively, the agencies) to establish certain safety and soundness standards by regulation or by guideline for all insured depository institutions. Under section 39, the agencies must establish three types of standards: (1) Operational and managerial standards; (2) compensation standards; and (3) such standards relating to asset quality, earnings, and stock valuation as they determine to be appropriate.

ii. Section 39(a) requires the agencies to establish operational and managerial standards relating to: (1) Internal controls, information systems and internal audit systems, in accordance with section 36 of the FDI Act (12 U.S.C. 1831m); (2) loan documentation; (3) credit underwriting; (4) interest rate exposure; (5) asset growth; and (6) compensation, fees, and benefits, in accordance with subsection (c) of section 39. Section 39(b) requires the agencies to establish standards relating to asset quality, earnings, and stock valuation that the agencies determine to be appropriate.

iii. Section 39(c) requires the agencies to establish standards prohibiting as an unsafe and unsound practice any compensatory arrangement that would provide any executive officer, employee, director, or principal shareholder of the institution with excessive compensation, fees or benefits and any compensatory arrangement that could lead to material financial loss to an institution. Section 39(c) also requires that the agencies establish standards that specify when compensation is excessive.

iv. If an agency determines that an institution fails to meet any standard established by guideline under subsection (a) or (b) of section 39, the agency may require the institution to submit to the agency an acceptable plan to achieve compliance with the standard. In the event that an institution fails to submit an acceptable plan within the time allowed by the agency or fails in any material respect to implement an accepted plan, the agency must, by order, require the institution to correct the deficiency. The agency may, and in some cases must, take other supervisory actions until the deficiency has been corrected.

¹Section 39 of the Federal Deposit Insurance Act (12 U.S.C. 1831p-1) was added by section 132 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), Pub. L. 102-242, 105 Stat. 2236 (1991), and amended by section 956 of the Housing and Community Development Act of 1992, Pub. L. 102-550, 106 Stat. 3895 (1992) and section 318 of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103-325, 108 Stat. 2160 (1994).